

Senate Bill 1335 – Sustainable Packaging for the State of California Act of 2018

April 10, 2019 Informal Rulemaking Workshop #1

Discussion Document

Governor Brown signed [Senate Bill \(SB\) 1335 \(Allen, Chapter 610, Statutes of 2018\)](#) on September 20, 2018 to establish a process, and develop criteria, for determining the types of food service packaging that are reusable, recyclable, or compostable. CalRecycle is required to adopt regulations for the implementation of SB 1335.

This document is intended to guide initial stakeholder discussion to solicit input regarding statutory terms and processes and to aid staff in identifying what criteria should be considered and clarified through rulemaking. Text in a gray box contains the statutory reference followed by questions for stakeholder input. A second informal rulemaking workshop will be held on June 4, 2019, to solicit stakeholder input on development of the published list for approved types of food service packaging. CalRecycle will use the input provided from the April and June workshops to prepare the proposed regulatory text and initiate formal rulemaking in the fall of 2019.

SB 1335 Informal Workshops

April 10, 2019 – Informal Rulemaking Workshop #1

- Timeline
- Development of regulatory text:
 - Definitions
 - Food service packaging criteria
 - Reusable
 - Recyclable
 - Compostable
 - Evaluation process and maintenance of list
 - Developing the list

June 4, 2019 – Informal Rulemaking Workshop #2

- Proposed draft regulatory text/concepts

The outline below includes an initial list of statutorily mandated elements that may need clarification:

I. [Definitions](#)

CalRecycle staff identified the following terms that may benefit from further clarification in regulations. Additionally, terms that are not defined in statute are described within the context of the statutory citation where they are located.

- **Beverage container:** § 42370.1(a). “Beverage container” has the same meaning as defined in Section 14505.

- These kinds of containers are NOT considered food service packaging for the purposes of SB 1335.
- **Food service facility:** § 42370.1(b). “**Food service facility**” means an operation or business that is located in a state-owned facility, operating on or acting as a concessionaire on state property, or under contract to provide food service to a state agency and that stores, prepares, packages, serves, vends, or otherwise provides prepared food. “**Food service facility**” may include, but is not limited to, a cafeteria, commissary, restaurant, deli, store, shop, market, or mobile food unit.

A food service facility is one that conforms to one or more of the following:

1. Located in a State-owned facility
 2. Operating on State property or acting as a concessionaire on State property
 3. Under contract to provide food service to a State agency
- **Food service packaging:** § 42370.1(c). “**Food service packaging**” means a product used for serving or transporting prepared, ready-to-consume food or beverages, including, but not limited to, plates, cups, bowls, trays, and hinged or lidded containers. “**Food service packaging**” does not include beverage containers or single-use disposable items, such as straws, cup lids, plastic bags, and utensils, or single-use disposable packaging for unprepared foods.
 - **Prepared food:** § 42370.1(d). “**Prepared food**” means a food or beverage prepared for consumption on or off a food service facility’s premises, using any cooking or **food preparation technique**. “**Prepared food**” does not include prepackaged, sealed food that is mass-produced by a third party off the premises of the food service facility.

Question for Stakeholders

1. Is the definition of “food service facility” sufficiently clear to describe the universe of state agencies required to comply with SB 1335?
 - a. UC, CSU, CCC campuses, stadiums, dormitories?
 - b. State Fair Concessionaires
 - c. State Park campgrounds
 - d. Court buildings, Capitol, Correctional Facilities
2. Is the definition of “food service packaging” sufficiently clear to describe the types of food service packaging that are covered under SB 1335?
 - a. Clarify the term “bag” to refer to carry-out bags?
3. Is the definition of “prepared food” sufficiently clear to describe the difference between prepared and unprepared food?
 - a. Is the term “prepared” sufficiently clear and would it include all of the following?
 - i. Washing, defrosting, portioning, cutting, reconstituting
4. Are there other terms that need clarification?

II. Food service packaging criteria

Several elements of SB 1335 will require clarification through rulemaking to further develop specific criteria and processes required by the law. This will include clarifying the criteria for approving food

service packaging and establishing the process for evaluating and maintaining the list of approved types of food service packaging.

§ 42370.2(a)(1): On or before January 1, 2021, the department shall adopt regulations to establish a process, and develop criteria, for determining the types of food service packaging that are reusable, recyclable, or compostable.

§ 42370.1(d) “Prepared food” means a food or beverage prepared for consumption on or off a food service facility’s premises, using any cooking or food preparation technique. **“Prepared food”** does not include prepackaged, **sealed food** that is **mass produced by a third party** off the premises of the food service facility.

Questions for Stakeholders

1. Does the term “sealed food” need further clarification?
 - a. Are adhesives necessary?
 - b. Does the package need to be airtight?
2. What does it mean to be mass produced by a third party?
 - a. Vertical integration
 - b. How much needs to be produced to be considered “mass produced”?

A. Criteria

1. Reusable

§ 42370.2(c)(1-2) For purposes of determining if a type of food service packaging is reusable, pursuant to subdivision (a), the director shall consider, at a minimum, all of the following criteria:

- (1) Whether the packaging is **conventionally disposed** of after a single use.
- (2) Whether the packaging is **sufficiently durable and washable** to allow for multiple uses.

Questions for Stakeholders

1. How many uses should be required for a type of food service packaging to be considered reusable?
2. How do we determine if something is “conventionally” disposed after a single use?
3. Does the package need to be reused for the same purpose as it was originally used?
4. Is there a cleanliness standard for food service ware that is reusable?
 - a. Washed in a commercial dishwashing process?
5. Does the term “durable” require further clarification?

2. Recyclable

§ 42370.2(d)(1-6) For purposes of determining if a type of food service packaging is recyclable pursuant to subdivision (a), the director shall consider, at a minimum, all of the following criteria:

- (1) Whether the type of food packaging is eligible to be labeled as “recyclable” in accordance with the uniform standards contained in article 7 (commencing with Section 17850 of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code.
- (2) Whether the type of food service packaging is **regularly collected, separated, and cleansed** for recycling by recycling service providers.
- (3) Whether the type of food service packaging is **regularly sorted and aggregated** in to **defined streams** for **recycling processes**.
- (4) Whether the type of food service packaging is **regularly processed and reclaimed or recycled** with **commercial recycling processes**.
- (5) Whether the food service packaging material **regularly becomes feedstock** that is used in the production of **new products**.
- (6) Whether the food service packaging material is recycled in **sufficient quantity**, and is of **sufficient quality, to maintain a market value**.

Questions for Stakeholders

1. What constitutes recycling?
 - a. Chemical recycling? ADC?
2. What is a reasonable frequency for a type of food service packaging to be regularly collected, separated, cleansed, sorted, aggregated, processed, reclaimed, and/or recycled?
3. Does the term “cleansed” require further clarification?
4. What is a defined stream for recycling processes?
5. What are commercial recycling processes?
 - a. What about private take-back programs?
6. What does it mean for a type of food service packaging to regularly become feedstock that is used in the production of new products?
7. Does the term “new products” require further clarification?
 - a. Plastic pellets? Sheet metal? New package?
8. What does it mean for a type of food service packaging to be recycled in sufficient quantity, and is of sufficient quality, to maintain a market value?
 - a. What does market value mean?

3. Compostable

§ 42370.2(e)(1-4) For purposes of determining if a type of food service packaging is compostable pursuant to subdivision (a), the director shall consider, at a minimum, all of the following criteria:

- (1) Whether the food service packaging will, in a **safe and timely manner, break down** or otherwise become part of **usable compost** that can be composted in a **public or private aerobic compost facility** designed for and capable of processing post-consumer food waste and food-soiled paper.
- (2) Whether food service packaging made from plastic is certified to meet the ASTM standard specification identified in either subparagraph (A) or (C) of paragraph (1) of subdivision (b) of Section 42356 and adopted in accordance with Section 42356.1, if applicable.
- (3) Whether the food service packaging is **regularly collected and accepted** for processing at public and private compost facilities.
- (4) Whether the type of food service packaging is eligible to be labeled as “compostable” in accordance with the uniform standards contained in Article 7 (commencing with Section 17580) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code.

Questions for Stakeholders

1. Does “safe and timely manner” require further clarification?
2. Does the term “break down” require further clarification?
3. What does it mean to become “part of usable compost”?
4. What types of facilities should be considered a public or private aerobic compost facility?
 - a. Include anaerobic facilities as well?
5. What does it mean for a type of food service packaging to be regularly collected and accepted for processing at public and private compost facilities?
 - a. If it is accepted but screened prior to composting process?
 - b. If it is processed through compost facility but screened out of the finished product?
6. How do we determine if a material has become part of usable compost?

III. Evaluation process and maintenance of list

§ **42370.2(b)(1)** The regulations adopted pursuant to subdivision (a) shall be used for determining the types of food service packaging that may be included on the list developed pursuant to Section 42370.3.

(b)(2) The regulations shall also specify how the list shall be maintained and updated, in accordance with subdivision (b) of Section 42370.3.

§ **42370.3(b)** The department shall regularly, but no less than once every five years, evaluate the list of approved types of food service packaging to determine whether each of the types of approved food service packaging is reusable, recyclable, or compostable. After evaluation, the department may amend the list to remove or add a type of food service packaging based on whether it is reusable, recyclable, or compostable. The department shall post any updates to the list on its Internet Web site.

Question for Stakeholders

1. What conditions would warrant CalRecycle reevaluating the list prior to the end of a 5-year period?
2. What level of specificity is reasonable for the list?
 - a. SKU? Material types/groups?
 - b. Adhesives, labels, inks, dyes, etc. included as item description?
3. How can we create a system that allows for new products to be given a chance to establish a market?